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Paper No. 13

AUG 30 2005

Technology Center 2100

In re Application of: Mitsuhiro Ono )  
Application No.: 09/873,649 )  
Filed: Ojune 4, 2001 )  
For: INTEGRATED CIRCUIT FOR )  
MODEM )

**DECISION ON PETITION  
UNDER 37 CFR §1.181 TO  
WITHDRAW HOLDING OF  
ABANDONMENT**

This is a decision in response to the request for reconsideration, filed August 15, 2005, of the decision on petition mailed July 7, 2005 denying a request for withdrawal of the holding of abandonment.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office communication mailed September 23, 2003. A Notice of Abandonment was mailed on March 31, 2004.

In the absence of any apparent irregularity associated with the mailing of an Office communication, the Office may presume that the communication was properly mailed to the address of record. This presumption may be overcome by showing that the Office communication was not received.

M.P.E.P. § 711.03(c), section II states:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

The previous petitions were denied because it was not clear that the docket records provided would have reflected incoming correspondence for this application at the relevant time period.

In support of the request for reconsideration, Applicant's attorney, Steven I. Weisburd, attests that although he had changed affiliation, the docket record remained open at Ostrolenk and that this is where the record would have been entered in the firm's docketing system had the Office action been received and docketed.

Petitioner has met the criteria of set out in MPEP 711.03(c) for establishing failure to receive an Office action. The petition is **GRANTED**. The Notice of Abandonment is **WITHDRAWN**.

The application is being forwarded to the Technology Center support staff to remail the Office communication, originally mailed September 23, 2003 with the two month shortened statutory period restarted to run from the date of the remailing.

Any inquiries with respect to this decision may be addressed to Pinchus M. Laufer at (571) 272-3599.



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